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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Implementation of Section 255)
of the Telecommunications Act)
of 1996)
)
Access to Telecommunications)
Services, Telecommunications)
Equipment, and Customer)
Premises Equipment By Persons)
with Disabilities)

WT Docket No. 96-198

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AT&T COMMENTS

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AT&T COMMENTS

Pursuant to Section 1.430 of the Commission's Rules, 47 C.F.R. § 1.430, AT&T Corp. ("AT&T") submits these comments on the Commission's NOI in this proceeding,¹ seeking comments and data to provide a basis for further proceedings to implement Section 255 of the Communications Act of 1934, as amended.

BACKGROUND

Section 255, enacted in the Telecommunications Act of 1996, requires both manufacturers of telecommuni-

¹ Implementation of Section 255 of the Telecommunications Act of 1996/Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Notice of Inquiry, FCC 96-382, released September 19, 1996 ("NOI").

cations equipment -- including customer premises equipment ("CPE") -- and providers of telecommunications service to ensure that their offerings are "accessible to and usable by individuals with disabilities, if readily achievable."² For purposes of applying these obligations, the definitions of "disability" and "readily achievable" are borrowed from their statutory counterparts in the Americans with Disabilities Act ("ADA").³ Insofar as satisfaction of these accessibility standards is not "readily achievable," the statute requires both manufacturers and service providers to ensure that their offerings are compatible with existing peripheral devices and specialized CPE commonly used by persons with disabilities.⁴

² 47 U.S.C. § 255(b)-(c). As the NOI (¶ 8) points out, Section 255 does not define the term "provider of telecommunications service." However, the statutory definition of "telecommunications" that was contemporaneously enacted as Section 3(43) of the Communications Act tracks the standard for a "basic service" under the Commission's Computer Inquiry decisions (i.e., transmission "without change in the form or content of the information as sent and received").

³ See 47 U.S.C. § 255(a)(1)-(2) (citing 42 U.S.C. § 12102(2)(A) (ADA definition of "disability") and 42 U.S.C. § 12181(9) (ADA definition of "readily achievable").

⁴ 47 U.S.C. § 255(d).

Under this new section, the United States Architectural and Transportation Barriers Compliance Board ("ATBCB") is required, in conjunction with the Commission, to adopt accessibility guidelines governing telecommunications equipment (including CPE) by August, 1997.⁵ However, Section 255(f) vests exclusive jurisdiction in the Commission to enforce the statute and its implementing regulations.

The Commission initiated this proceeding primarily in response to the ATBCB's request for information on access issues concerning telecommunications equipment and CPE that may be used by that body in fulfilling its obligation to draft guidelines for such equipment.⁶ Additionally, the NOI (§§ 4-5) seeks comment on issues that "overlap and converge" with the Commission's regulation of telecommunications services under Section 255, including jurisdiction, matters of statutory interpretation, and implementation and enforcement.

⁵ 47 U.S.C. § 255(e).

⁶ NOI, § 4, citing letters dated August 30, 1996 to individual Commissioners from Lawrence W. Roffee, Executive Director, and Roberta E. Breedon, Chair, Telecommunications Access Advisory Committee, ATBCB.

STATEMENT

AT&T welcomes the Commission's initiative to improve the accessibility of telecommunications services to persons with disabilities, and is pleased to respond to the Commission's request for information on these matters. Historically, AT&T has been a leader in addressing the telecommunications needs of persons with disabilities, as exemplified by its introduction in 1980 of Operator Services for the Deaf ("OSD"),⁷ and its offering of telecommunications relay service ("TRS") on an intrastate basis commencing in 1987 -- six years before provision of TRS by common carriers was mandated by the ADA.⁸ Moreover, AT&T in 1989 established an

⁷ OSD provides traditional operator and directory assistance services to persons who are deaf, hard of hearing, and speech disabled, using a TT device. The service is accessible to both residential and business customers 24 hours a day, seven days a week, by dialing a toll free number from any phone in the United States.

⁸ See 47 U.S.C. § 225 (codifying Title IV of the ADA). TRS allows persons who are deaf, deaf-blind, hard of hearing or speech disabled, and who use a TT, to communicate with persons without hearing or speech disabilities through a communications assistant ("CA").

AT&T has provided TT access to its billing and inquiry business office since 1984. Moreover, since 1981 AT&T has offered discounts for interstate and intraLATA calling by persons with a certified hearing and/or speech disability requiring the use of TTs to complete their telephone calls. This AT&T True-to-You Savings discount (formerly the Disabled Persons Discount, or DPD) applies to one residence telephone line for each

(footnote continued on following page)

Accessible Communications Services ("ACS") business unit to address the specific needs of customers with disabilities. AT&T Wireless Services ("AWS") likewise has a long background in serving the needs of persons with disabilities, including such innovations as the development in 1990 of software to enable persons who use text telephones ("TTs") to send text messages to alphanumeric paging devices, without the need for interaction with a live attendant.

STATEMENT

AT&T urges the Commission to proceed cautiously in implementing Section 255, to assure that its actions do not inadvertently undermine important statutory and regulatory goals. Specifically, as the NOI (§ 21) correctly points out, the fact that Section 255 borrows numerous critical statutory definitions from the context of physical access to facilities under the ADA creates serious "interpretive difficulties" for the application of Section 255 to the functional characteristics of

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certified customer. Additionally, AT&T provides an exemption from certain interLATA directory assistance charges for the residence telephone line of individuals whose disability prevents their use of a telephone directory.

telecommunications services. Moreover, in a telecommunications marketplace that is undergoing rapid technological change, prematurely imposing fixed standards for accessibility may have the unintended -- and clearly undesirable -- result of "constraining competitive innovation" (NOI, ¶ 16).

Such an outcome would be flatly inconsistent with the Commission's prior decisions under the ADA, recognizing the need to expand the availability of services to the disabled without discouraging the development of new and improved technology.⁹ At the same time, the Commission's accessibility determinations must take into account the substantial investment of carriers and manufacturers alike in current technologies, and the broad range of technologies already deployed in the nationwide telecommunications network.¹⁰

In these circumstances, it would clearly be inadvisable for the Commission to attempt to articulate

⁹ See, e.g., Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, 6 FCC Rcd 4657 (1991).

¹⁰ For this reason, any Commission ruling requiring continual adjustment in the "readily achievable" standard to "recognize the most recently developed technology," as described in the NOI (¶ 16), would cause severe and unwarranted economic dislocations for carriers and manufacturers.

specific, detailed guidelines or policy statements for its own application of Section 255 -- much less to prescribe rules implementing that statute. Instead, the Commission should approach its implementation responsibilities under Section 255 in a measured and flexible fashion, through case-by-case application of the statutory legal criteria on the basis of a concrete factual record developed in each proceeding. This procedure is best calculated to provide the Commission and interested parties over time with a body of precedent that can inform the Commission's determinations in any eventual policy-setting or rulemaking. Nevertheless, even at this early stage the Commission may appropriately identify several general principles for administering Section 255.

First, implementation of Section 255 is unlikely to be fully successful unless the Commission affirmatively encourages manufacturers and service providers to seek input from persons with disabilities in connection with their design and development of telecommunications equipment and service offerings. AT&T's own experience in service and product development confirms the desirability of obtaining such information directly from the consumers most knowledgeable about use of the services and products.

Since 1984, AT&T has maintained a Consumer Advisory Panel on Disability Issues, composed of ten

advocates for persons with disabilities drawn from disability-focused agencies and associations, rehabilitation facilities, educational institutions, foundations and consulting firms. The panel, which meets quarterly, has provided AT&T with advice on incorporating accessible design, for persons with a wide range of abilities and in a wide range of situations, in its offerings. AWS also has conducted extensive outreach efforts with disability communities, through mechanisms such as partnerships with state offices on disability affairs, focus groups and interactive forums, and participation by persons with disabilities in trial programs and product evaluations.¹¹

Based on this extensive experience, AT&T believes that similar consultation with the consumers having the most direct knowledge and use of these network products and services would also prove beneficial to

¹¹ Among other insights, these AWS outreach efforts have demonstrated the value of adapting existing cellular features and functions for use by persons with disabilities. For example, AWS' VoiceTouch feature provides a voice activated dialing service that allows a person to say the name of a pre-programmed destination (e.g., "Home"), or to speak the individual numbers of a phone number, and dial the cellular phone without actually touching it. Although VoiceTouch was originally developed to promote safety for persons using their cellular phones while driving, experience has shown that feature also works well for people who are blind or partially sighted, or who are not physically able to dial a phone.

other service providers and manufacturers. Encouraging solicitation of such input from persons with disabilities and other advocates in the community in evaluating product and service accessibility would therefore be a reasonable approach in establishing Section 255 compliance procedures.

Second, the Commission should refrain from establishing de jure or de facto exemptions for particular carriers or manufacturers, or categories of such entities, relieving them on financial grounds from their Section 255 obligation to provide accessible communications services and products. As the NOI (§ 1) clearly recognizes, in enacting Section 255 Congress sought to provide persons with disabilities the same breadth of choices among services, features and price already available to other telecommunications customers. Exempting telecommunications service and equipment providers on the basis of their "financial resources" would clearly disserve that objective.¹² Moreover, the NOI (§ 18) correctly observes that the Commission's

¹² This is not to suggest that an entity's financial resources are irrelevant to the determination of its compliance with the ADA standards carried over into Section 255; clearly they are (NOI, § 18). Rather, the statute makes clear that a party's financial resources are only one factor among many to be considered in determining whether providing access to persons with disabilities is "readily achievable" for a specific service or equipment provider.

evaluation of the financial resources of a wide variety of industry players must not be allowed to "distort competitive incentives." Exempting any category of provider from Section 255 on the basis of their financial wherewithal would create precisely these perverse incentives for parties to minimize (or altogether evade) their Section 255 responsibilities, so as to shift those compliance costs to competitors.¹³ Here again, it is apparent that such a result would thwart the statutory objective and would seriously disserve the interests of persons with disabilities.

Third, the Commission should acknowledge that it is unnecessary that each service offering of a telecommunications provider satisfy the accessibility criteria of the ADA and Section 255 for all potential customers with disabilities. Given the wide range of disabilities among users (e.g., hearing, speech, sight or mobility impairments, or combinations of these conditions), as well as the limitations of current and future technology, it would clearly be impractical to establish such a standard.¹⁴ Instead, the Commission

¹³ AT&T has previously shown that similar cost-shifting incentives existed in the context of TRS; these incentives compelled a finding that all common carriers were required to provide that offering.

¹⁴ Indeed, as the NOI itself points out (§ 22), design changes in a service offering to accommodate one

should recognize that the statutory objective is fully satisfied if particular service offerings by the provider are accessible to and usable by persons with specific disabilities, and those offerings provide capabilities that are reasonably substitutable with similar services offered by the provider that are not accessible to persons with that specific disability.¹⁵

Fourth, in view of the increasing "overlap and converge[nce]" between telecommunications equipment and services noted in the NOI (§ 4), the Commission should affirmatively encourage consultation between industry groups representing service providers and telecommuni-

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disability could interfere with the provider's ability to make that offering accessible to persons with other disabilities.

¹⁵ This approach is particularly appropriate for wireless personal communications services, in which the consumer may select from a variety of product and service offerings to create a solution that meets that customer's individual needs. For example, customers with mild hearing loss may select a wireless phone with enhanced volume capabilities, while customers who wear a hearing aid may instead select an inductively coupled telephone. Individuals with more severe degrees of hearing loss could select from among wireless telephones that have an external audio jack for hearing aid/telephone interconnection, or that use vibration rather than ringing to alert the user to an incoming call. Additionally, many wireless telephones can be acoustically coupled to TT devices for use by persons with various degrees of hearing and/or speech disabilities.

cations manufacturers, to assure that their product and service design and development are coordinated to assure accessibility to persons with disabilities.¹⁶

Reliance on the general principles described above will ensure that persons with disabilities are provided access to a diverse selection of telecommunications products and services, as envisioned by Congress, and at the same time avoid skewing the development of a competitive communications market or artificially inhibiting the deployment of differing technologies in the nationwide telecommunications network.

Finally, with respect to the enforcement issues raised in the NOI (§§ 28-34, 36-40), AT&T submits that there is no immediate need for the Commission to prescribe special rules and procedures, either on a permanent or interim basis, for addressing complaints filed against either manufacturers or service providers pursuant to Section 255. The mere fact that this right of action supplements rights available solely against

¹⁶ As the NOI (§ 26) correctly points out, Section 251(a)(2) of the Communications Act, also enacted in the Telecommunications Act of 1996, imposes a duty on telecommunications carriers "not to install network features, functions or capabilities" that do not comply with standards established pursuant to Section 255. It is thus especially critical that manufacturers of network equipment, as an industry, closely coordinate their design and development processes with the needs of telecommunications service providers to satisfy Section 255 requirements.

common carriers under Sections 206-208 of the Communications Act, as the NOI (§ 36) correctly points out, does not in itself mandate the adoption of a different set of procedural rules for resolving complaints under these statutory provisions. Indeed, AT&T submits that there is nothing to indicate a priori that the Commission's processes for addressing complaints against carriers under Sections 206-208 will be any less satisfactory for administering complaints under Section 255 against either manufacturers or service providers.

Moreover, in response to enactment of Section 402 of the Telecommunications Act, establishing new deadlines for resolution of Section 208 complaints, the Commission is expected soon to commence a rulemaking to adopt more expedited procedures for processing those proceedings. Especially in light of that imminent development, it would be an inappropriate application of scarce Commission resources to initiate a separate rulemaking on Section 255 complaint procedures at this time. In the interim before revised formal complaint rules are adopted, the current rules appear sufficiently flexible to satisfactorily accommodate any Section 255 complaints that may be lodged with the Commission. After adoption of the new formal complaint rules, should any of

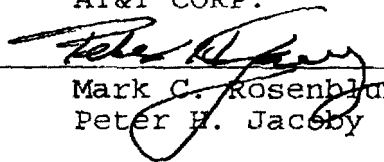
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those procedures appear unsuitable in the Section 255 context, the Commission of course may then modify those regulations as appropriate.

Respectfully submitted,

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